



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF SALEM

Complainant

v.

SALEM POLICE RELIEF
ASSOCIATION

Respondent

CASE NO: P-0715:18

DECISION NO. 92-08

APPEARANCES

Representing the Town of Salem:

Robert P. Leslie, Esq.

Representing Salem Police Relief Association:

James W. Carpenito, Esq.

Also appearing:

William Foster, Town of Salem
Barry M. Brenner, Town of Salem
John Tomas, Salem Police Relief

BACKGROUND

On or about May 10, 1991, the Town of Salem (Employer), by and through its counsel, Robert P. Leslie, Esq. filed improper practice charges (ULP) against the Salem Police Relief Association (Association) alleging violations of RSA 273-A:5, II (d) and (g) [sic]. The Association's response was dated May 24, 1991 and filed May 29, 1991. The case was then set for and heard by this Board on August 21, 1991. Respondent Association's post-hearing brief was filed September 5, 1991.

The employer has charged that the Association has refused to reopen negotiations for the April 1, 1991 - March 31, 1992 contract year once the voters rejected the warrant which would have funded the relevant contract costs on or about March 16, 1991. On or about March 27, 1991, the employer advised the Association of its desire to reopen negotiations under RSA 273-A:3, II (b). The employer charges that the Association refused to reopen negotiations for the second year of the contract on or about April 15, 1991. These charges followed.

FINDINGS OF FACT

1. The Salem Police Relief Association is the duly certified and recognized exclusive bargaining agent for the patrol officers, sergeants and dispatchers of the Salem Police Department.
2. The Town of Salem is a public employer as defined by RSA 273-A:1, X.
3. A collective bargaining agreement exists between the Association and the Town, the duration of which is from April 1, 1990 to March 31, 1992. That document contains two wage schedules, one effective April 1, 1990 and a second effective April 1, 1991. All amounts on the wage schedule effective April 1, 1991, are five (5%) percent higher than the amounts set forth on the April 1, 1990 wage schedules.
4. On or about March 17, 1990, the legislative body of the Town of Salem, as defined by RSA 273-A:1, XII, approved warrant Article 25 which provided as follows:

To see if the Town will vote to raise and appropriate the sum of \$1.00, such sum representing the cost of those increased economic benefits for members of the Salem Police Department to which they are entitled under the terms of the latest Collective Bargaining Agreement entered into by the Selectmen and the Salem, New Hampshire Police Relief.

The collective bargaining agreement referenced therein is the same document referenced in item 3, above. The foregoing warrant article makes no reference to the duration of the contract or to the period for which one dollar will fund the above-referenced contract benefits.

5. On or about March 16, 1991, the legislative body of the Town of Salem rejected Warrant Article 25 which provided as follows:

To see if the Town will vote to raise and appropriate the sum of ninety-four thousand, eight hundred ninety-two dollars (\$94,892.00), such sum representing the cost of those increased economic benefits for members of the Salem Police Department to which they are entitled under the terms of the latest Collective Bargaining Agreement entered into by the Selectmen and the Salem, New Hampshire Police Relief.

The collective bargaining agreement referenced therein is the same document referenced in Item 3, above.

6. On or about March 27, 1991, in a letter from Town Manger Barry Brenner to John Tommasi, President of the Salem Police Relief Association, the Association was advised that (1) cost items for the contract year commencing April 11, 1991, were submitted, (2) that the Article representing those cost items was rejected, and (3) that the Town sought to reopen negotiations under RSA 273-A:3 II (b).

7. On or about May 1, 1991, Town Manager Brenner wrote Tommasi reiterating what Brenner believed to be the Association's rejection of a request to reopen negotiations and advising "that the Town views the Union's refusal to negotiate to be an unfair labor practice and intends to seek an order from the New Hampshire PELRB requiring the Union to renegotiate."
8. Post-hearing submittals by the parties agree that the figure of one (\$1.00) dollar was used for the 1990 town meeting because the parties had not concluded negotiations when the 1990 warrant was posted and because there was a need to have an "amendable" warrant article if negotiations were concluded prior to Town Meeting.
9. At the 1990 town meeting, the \$1 warrant article was amended to read \$94,370.00, representing the amount necessary to fund the first year of the contract and representing a five (5%) percent raise over wage rates prior to April 1, 1990.
10. Post-hearing submittals by the parties concur that voters attending the 1990 town meeting were told that financial consequences of the contract for the 1991-92 contract year would be submitted to the 1991 town meeting.
11. There is no evidence of an agreement during negotiations that both years of the April, 1990 through March, 1992 contract would be submitted to the 1990 town meeting.
12. Agreement on the 1990-92 collective bargaining agreement as well as voter approval of the funding of the first year of that contract on or about March 17, 1990 occurred before the Appeal of Sanborn Regional School Board decision of August 14, 1990 (133 N.H. 513).

DECISION AND ORDER

The ULP relative to alleged violations of RSA 273-A:5 II (g) is DISMISSED as no such statutory section exists. Our remaining analysis is directed to RSA-A:5 II (d), the alleged failure of the Association to negotiate in good faith with the public employer.

Even though the 1990 town meeting vote was taken some five months before the Sanborn decision, we believe that the principles set forth therein establish what the expectations of voters should properly be at such meetings. There is no question that only the first five (5%) percent increment was approved on or about March 17, 1990. The \$94,370 amended from the floor to the 1990 warrant article was only sufficient to fund the first year of the contract.

Review of the Association's post-hearing brief reveals that it would have this Board hold that this case is to be distinguished from Sanborn because the 1990 warrant article spoke to entitlement "under the terms of the latest collective bargaining agreement," purportedly referring to both years thereof, versus the set amount of money and fixed school year (1989-90) specifically referenced in the Sanborn warrant article for its March 9, 1989 meeting. The Association also claims sufficiency of warning based upon what

was told to voters at the March 17, 1990, meeting, i.e. "This is a two year agreement which runs from April 1st, 1990 to March 31, 1992. The wage adjustments are 5% for the first year [and] 5% for the second year....[T]he second year likewise provides for a 5% wage increase...." Association brief, pp 5-6 and meeting transcript, pp 284-285.

We disagree. From what this Board can glean from Sanborn, the notion of "warning" must be clear and unequivocal. In the context of Sanborn, "Submission...of a proposal to provide salary increases must be warned by a warrant article sufficient to indicate plainly that action maybe taken on such matters at the place and time stated." (113 N.H. 513 at 522). Notwithstanding the allegations that voters attending the 1990 town meeting were told that the contract was for two years and that it involved a five (5%) percent increase in each of those years, the fact that both parties (Town brief, p. 2, Association's brief, p. 4) cited information being provided to the voters attending the 1990 town meeting that the second year of the contract would be presented at the 1991 town meeting is persuasive to us that those voters never intended to and did not fund the second year of the contract by their actions on March 17, 1990.

On the issue of an alleged violation of RSA 273-A:5 II (d), we again look to Sanborn for guidance. Like this case, Sanborn involved the employer's complaint that the union refused to renegotiate after the legislative body of the public employer rejected a subsequent year(s) of a multi-year contract. Under Sanborn we learned that such circumstances do constitute a prohibited or unfair labor practice (133 N.H. 513 at 515). Further, like Sanborn and as noted on Employer's brief (p.4), there are several areas of similarity:

- (1) agreement was achieved after the warrant for the annual meeting had been printed.
- (2) the relevant warrant article did not warn voters that a multi-year agreement was to be voted upon,
- (3) a board representative told the meeting that although the agreement was for more than one year the Board was only asking for approval of the first year,
- (4) the meeting was told the percentage increase for each year of the agreement, but only given a detailed estimate of the first year's cost,
- (5) there was no discussion as to the legal effect of the vote being binding in subsequent years,
- (6) a representative of the board told the meeting that the vote was only on the first year and additional votes would be taken in subsequent years.

Under these circumstances we find a violation of RSA 273-A:5 II (d) with a bargaining order provided as a remedy, below.

We must note that the response filed in this case on or about May 28, 1991, was only an answer. It contained no counter-claim. When we find a claim of unfair labor practice in the Association's post hearing brief (p. 6, paragraph 6) filed on September 6, 1991, after hearing, alleging a violation of RSA 273-A:5 (e), we must reject and DISMISS same as having been improperly plead, i.e., it was not so much as the subject of a properly filed complaint under RSA 273-A:6.

There is the thread of an equity argument throughout the Association's case. Notwithstanding our findings in this case, those arguments do not go unnoticed. For example, we recognize that there may well have been concessions in other cost or non-cost areas so that the parties might have been able to reach the overall consensus reflected in their April 1990 through March, 1992 contract. The Association's post-hearing brief (p.7) noted:

It is the place of the public employer to ensure the matters entrusted to it under the statutory scheme of Chapter 273-A... The contract was struck as a multi-year agreement...The public employer is obligated to honor it since the public employees agreed to it and changed their position in reliance upon the contract.

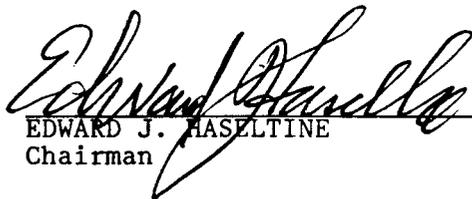
Without commenting on the equitable aspects of this articulate argument, we do note that there is one thing which the public employees apparently did not contract for, namely, the submission of their multi-year agreement for one-time and complete approval at the 1990 town meeting. Had they reached that agreement, the employer would not have had the option or prerogative of submitting only one year of the agreement or telling the voters that the second year would be presented at the 1991 town meeting.

Based on our review of the pleading, the testimony, post-hearing documents, and the self-imposed obligations of the parties found in Article 31 of the collective bargaining agreement, this Board finds that

1. Salem Police Relief Association violated RSA 273-A:5 II (d) by refusing to re-negotiate with the employer after the employer sought to do so on or about March 27, 1991.
2. Salem Police Relief Association must forthwith cease and desist from refusing to negotiate terms of the second year of the contract as sought by the employer.
3. Salem Police Relief Association must engage in good faith bargaining with the employer when and if requested to do so by the employer with respect to the second year of the contract.
4. Under the terms of Article 31 of the parties' contract, the terms of that document remain in effect until a successor agreement is executed, with the obvious exception of the "cost item" appropriations which were the subject of these proceedings.

So ordered.

Signed this 22nd day of January, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.